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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,126	03/26/2004	Norman I. Bruckner		8823

7590 03/21/2006
NORMAN I. BRUCKNER
3432 BROOKSHIRE DR
PLANO, TX 75075

EXAMINER

HUI, SAN MING R

ART UNIT PAPER NUMBER

1617

DATE MAILED: 03/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/810,126	Applicant(s) BRUCKNER ET AL.	
	Examiner San-ming Hui	Art Unit 1617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 December 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 7-9 and 15-17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 10-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Applicant's amendments filed December 13, 2005 have been entered. Claims 1-17 are pending.

Claims 7-9 and 15-17 are withdrawn from consideration as they are drawn to non-elected invention.

Election/Restrictions

Applicant's remarks on December 13, 2005 averring the restriction requirements not being proper have been considered, but are not found persuasive. The invention of Group I and II are directed to the product and the method of using such product. They are patentably distinct since the method as claimed method can be practiced with a materially different product such as bleach. Examiner acknowledged the Applicant's arguments that bleach is not a high level disinfecting composition; however, whether or not bleach is a high level disinfecting composition is not an issue. The fact is bleach is a materially different product than conjugated aliphatic dialdehyde as claimed. Therefore, the herein claimed inventions are patentably distinct. The search for the composition and the product of using the composition are not coincide with each other. Note that the search field for a composition containing certain ingredients is different from the search field for a particular method of use employing a composition containing the same ingredients. The search is not limited to the patent files. Therefore, the search for the compositions and methods encompassed by the claims presents an undue burden to the Office.

The outstanding objection is withdrawn in view of the amendments filed December 13, 2005.

The outstanding rejection under 35 USC 102(b) is withdrawn in view of the amendments filed December 13, 2005 since the claims recite buffering agents as one of the components in the composition.

The outstanding rejection under 35 USC 103(a) is withdrawn in view of the amendments filed December 13, 2005 since the claims recite buffering agents as one of the components in the composition.

New ground of rejection

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

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4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-6 and 10-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoover in view of Buchalter (US 3,983,252) and Bruckner et al., Hoover and Bruckner are references of record.

Hoover teaches a bactericidal composition comprising malealdehyde (pH 4.0) and hydroquinone (see column 2, table 2, lines 1-12, for example).

Hoover does not teach a composition comprising surfactants, glycols, corrosion inhibitors, antioxidants, sequesterent, odor suppressants, glycols, dye, and fragrance.

Buchalter teaches a disinfectant composition comprising aliphatic dialdehyde that is stable and potent for killing germs. Buffer is added to the composition in order to maintain the pH to 6.8 (See col. 6, example 2).

Bruckner et al. teaches a disinfecting and sterilizing composition comprising an aromatic dialdehyde further comprising a surfactant, a corrosion inhibitor, an antioxidant, a sequesterent, a dye or a fragrance, and a glycol. Bruckner et al. also teach that using these other ingredients are well known in the art (See column 4, lines 9, lines 30-34, for example).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate butenedial into the composition in Buchalter and further incorporate the auxiliary agents taught in Bruckner.

One of ordinary skill in the art would have been motivated to incorporate butenedial into the composition in Buchalter and further incorporate the auxiliary agents taught in Bruckner. since substituting the saturated aliphatic dialdehyde with an

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unsaturated aliphatic dialdehyde or adding the unsaturated would have been reasonably expected to be similarly effective in against bacteria. Furthermore, the auxiliary agents such as recited surfactants, glycols, corrosion inhibitors, antioxidants, sequesterent, odor suppressants, glycols, dye, and fragrance are well-known in the art that can be used with dialdehyde composition, combining a dialdehyde, which is known to be an effective disinfectant, with those herein claimed additives would have been reasonably expected to be effective for making an effective disinfectant because it is well known in the art to add these additives to dialdehydes to formulate an effective disinfectant or sterilizing agent.

Response to Arguments

Applicant's arguments with respect to claims 1-6 and 10-14 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any


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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to San-ming Hui whose telephone number is (571) 272-0626. The examiner can normally be reached on Mon 9:00 to 1:00, Tu - Fri from 9:00 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan, PhD., can be reached on (571) 272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


San-ming Hui
Primary Examiner
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